

§ 130.5

40 CFR Ch. I (7–1–03 Edition)

quality assurance/quality control guidance.

(b) The State's water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data. The uses of these data include determining abatement and control priorities; developing and reviewing water quality standards, total maximum daily loads, wasteload allocations and load allocations; assessing compliance with National Pollutant Discharge Elimination System (NPDES) permits by dischargers; reporting information to the public through the section 305(b) report and reviewing site-specific monitoring efforts.

[50 FR 1779, Jan. 11, 1985, as amended at 54 FR 14359, Apr. 11, 1989]

§ 130.5 Continuing planning process.

(a) *General.* Each State shall establish and maintain a continuing planning process (CPP) as described under section 303(e)(3)(A)–(H) of the Act. Each State is responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP.

(b) *Content.* The State may determine the format of its CPP as long as the minimum requirements of the CWA and this regulation are met. The following processes must be described in each State CPP, and the State may include other processes at its discretion.

(1) The process for developing effluent limitations and schedules of compliance at least as stringent as those required by sections 301(b) (1) and (2), 306 and 307, and at least stringent as any requirements contained in applicable water quality standards in effect under authority of section 303 of the Act.

(2) The process for incorporating elements of any applicable areawide waste treatment plans under section 208, and applicable basin plans under section 209 of the Act.

(3) The process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations for pollutants in accord-

ance with section 303(d) of the Act and § 130.7(a) of this regulation.

(4) The process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revision.

(5) The process for assuring adequate authority for intergovernmental cooperation in the implementation of the State WQM program.

(6) The process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under section 303(c) of the Act.

(7) The process for assuring adequate controls over the disposition of all residual waste from any water treatment processing.

(8) The process for developing an inventory and ranking, in order of priority of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of the Act.

(9) The process for determining the priority of permit issuance.

(c) *Regional Administrator review.* The Regional Administrator shall review approved State CPPs from time to time to ensure that the planning processes are consistent with the Act and this regulation. The Regional Administrator shall not approve any permit program under Title IV of the Act for any State which does not have an approved continuing planning process.

§ 130.6 Water quality management plans.

(a) *Water quality management (WQM) plans.* WQM plans consist of initial plans produced in accordance with sections 208 and 303(e) of the Act and certified and approved updates to those plans. Continuing water quality planning shall be based upon WQM plans and water quality problems identified in the latest 305(b) reports. State water quality planning should focus annually on priority issues and geographic areas and on the development of water quality controls leading to implementation measures. Water quality planning directed at the removal of conditions placed on previously certified and approved WQM plans should focus on removal of conditions which will lead to control decisions.

(b) *Use of WQM plans.* WQM plans are used to direct implementation. WQM plans draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures, including the financial and institutional measures necessary for implementing recommended solutions. State annual work programs shall be based upon the priority issues identified in the State WQM plan.

(c) *WQM plan elements.* Sections 205(j), 208 and 303 of the Act specify water quality planning requirements. The following plan elements shall be included in the WQM plan or referenced as part of the WQM plan if contained in separate documents when they are needed to address water quality problems.

(1) *Total maximum daily loads.* TMDLs in accordance with sections 303(d) and (e)(3)(C) of the Act and §130.7 of this part.

(2) *Effluent limitations.* Effluent limitations including water quality based effluent limitations and schedules of compliance in accordance with section 303(e)(3)(A) of the Act and §130.5 of this part.

(3) *Municipal and industrial waste treatment.* Identification of anticipated municipal and industrial waste treatment works, including facilities for treatment of stormwater-induced combined sewer overflows; programs to provide necessary financial arrangements for such works; establishment of construction priorities and schedules for initiation and completion of such treatment works including an identification of open space and recreation opportunities from improved water quality in accordance with section 208(b)(2) (A) and (B) of the Act.

(4) *Nonpoint source management and control.* (i) The plan shall describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution where necessary to protect or achieve approved water uses. Economic, institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and

modifying the BMPs as necessary to achieve water quality goals.

(ii) Regulatory programs shall be identified where they are determined to be necessary by the State to attain or maintain an approved water use or where non-regulatory approaches are inappropriate in accomplishing that objective.

(iii) BMPs shall be identified for the nonpoint sources identified in section 208(b)(2)(F)–(K) of the Act and other nonpoint sources as follows:

(A) *Residual waste.* Identification of a process to control the disposition of all residual waste in the area which could affect water quality in accordance with section 208(b)(2)(J) of the Act.

(B) *Land disposal.* Identification of a process to control the disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality in accordance with section 208(b)(2)(K) of the Act.

(C) *Agricultural and silvicultural.* Identification of procedures to control agricultural and silvicultural sources of pollution in accordance with section 208(b)(2)(F) of the Act.

(D) *Mines.* Identification of procedures to control mine-related sources of pollution in accordance with section 208(b)(2)(G) of the Act.

(E) *Construction.* Identification of procedures to control construction related sources of pollution in accordance with section 208(b)(2)(H) of the Act.

(F) *Saltwater intrusion.* Identification of procedures to control saltwater intrusion in accordance with section 208(b)(2)(I) of the Act.

(G) *Urban stormwater.* Identification of BMPs for urban stormwater control to achieve water quality goals and fiscal analysis of the necessary capital and operations and maintenance expenditures in accordance with section 208(b)(2)(A) of the Act.

(iv) The nonpoint source plan elements outlined in §130.6(c) (4)(iii)(A)(G) of this regulation shall be the basis of water quality activities implemented through agreements or memoranda of understanding between EPA and other departments, agencies or instrumentalities of the United States in accordance with section 304(k) of the Act.

(5) *Management agencies.* Identification of agencies necessary to carry out the plan and provision for adequate authority for intergovernmental cooperation in accordance with sections 208(b)(2)(D) and 303(e)(3)(E) of the Act. Management agencies must demonstrate the legal, institutional, managerial and financial capability and specific activities necessary to carry out their responsibilities in accordance with section 208(c)(2)(A) through (I) of the Act.

(6) *Implementation measures.* Identification of implementation measures necessary to carry out the plan, including financing, the time needed to carry out the plan, and the economic, social and environmental impact of carrying out the plan in accordance with section 208(b)(2)(E).

(7) *Dredge or fill program.* Identification and development of programs for the control of dredge or fill material in accordance with section 208(b)(4)(B) of the Act.

(8) *Basin plans.* Identification of any relationship to applicable basin plans developed under section 209 of the Act.

(9) *Ground water.* Identification and development of programs for control of ground-water pollution including the provisions of section 208(b)(2)(K) of the Act. States are not required to develop ground-water WQM plan elements beyond the requirements of section 208(b)(2)(K) of the Act, but may develop a ground-water plan element if they determine it is necessary to address a ground-water quality problem. If a State chooses to develop a ground-water plan element, it should describe the essentials of a State program and should include, but is not limited to:

(i) Overall goals, policies and legislative authorities for protection of ground-water.

(ii) Monitoring and resource assessment programs in accordance with section 106(e)(1) of the Act.

(iii) Programs to control sources of contamination of ground-water including Federal programs delegated to the State and additional programs authorized in State statutes.

(iv) Procedures for coordination of ground-water protection programs among State agencies and with local and Federal agencies.

(v) Procedures for program management and administration including provision of program financing, training and technical assistance, public participation, and emergency management.

(d) *Indian Tribes.* An Indian Tribe is eligible for the purposes of this rule and the Clean Water Act assistance programs under 40 CFR part 35, subparts A and H if:

(1) The Indian Tribe has a governing body carrying out substantial governmental duties and powers;

(2) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

(3) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Water Act and applicable regulations.

(e) *Update and certification.* State and/or areawide agency WQM plans shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals. Regional Administrators may require that State WQM plans be updated as needed. State Continuing Planning Processes (CPPs) shall specify the process and schedule used to revise WQM plans. The State shall ensure that State and areawide WQM plans together include all necessary plan elements and that such plans are consistent with one another. The Governor or the Governor's designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan. The certification may be contained in the annual State work program.

(f) *Consistency.* Construction grant and permit decisions must be made in accordance with certified and approved

WQM plans as described in §§ 130.12(a) and 130.12(b).

[50 FR 1779, Jan. 11, 1985, as amended at 54 FR 14360, Apr. 11, 1989; 59 FR 13818, Mar. 23, 1994]

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

(a) *General.* The process for identifying water quality limited segments still requiring wasteload allocations, load allocations and total maximum daily loads (WLAS/LAs and TMDLs), setting priorities for developing these loads; establishing these loads for segments identified, including water quality monitoring, modeling, data analysis, calculation methods, and list of pollutants to be regulated; submitting the State's list of segments identified, priority ranking, and loads established (WLAS/LAs/TMDLs) to EPA for approval; incorporating the approved loads into the State's WQM plans and NPDES permits; and involving the public, affected dischargers, designated areawide agencies, and local governments in this process shall be clearly described in the State Continuing Planning Process (CPP).

(b) Identification and priority setting for water quality-limited segments still requiring TMDLs.

(1) Each State shall identify those water quality-limited segments still requiring TMDLs within its boundaries for which:

(i) Technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;

(ii) More stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (law, regulation, or treaty); and

(iii) Other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority are not stringent enough to implement any water quality standards (WQS) applicable to such waters.

(2) Each State shall also identify on the same list developed under paragraph (b)(1) of this section those water quality-limited segments still requiring TMDLs or parts thereof within its

boundaries for which controls on thermal discharges under section 301 or State or local requirements are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife.

(3) For the purposes of listing waters under § 130.7(b), the term "water quality standard applicable to such waters" and "applicable water quality standards" refer to those water quality standards established under section 303 of the Act, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements.

(4) The list required under §§ 130.7(b)(1) and 130.7(b)(2) of this section shall include a priority ranking for all listed water quality-limited segments still requiring TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the applicable water quality standards. The priority ranking shall specifically include the identification of waters targeted for TMDL development in the next two years.

(5) Each State shall assemble and evaluate all existing and readily available water quality-related data and information to develop the list required by §§ 130.7(b)(1) and 130.7(b)(2). At a minimum "all existing and readily available water quality-related data and information" includes but is not limited to all of the existing and readily available data and information about the following categories of waters:

(i) Waters identified by the State in its most recent section 305(b) report as "partially meeting" or "not meeting" designated uses or as "threatened";

(ii) Waters for which dilution calculations or predictive models indicate nonattainment of applicable water quality standards;

(iii) Waters for which water quality problems have been reported by local, state, or federal agencies; members of the public; or academic institutions. These organizations and groups should be actively solicited for research they may be conducting or reporting. For example, university researchers, the